



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JULY 15, 2022

IN THE MATTER OF:

Appeal Board No. 622026

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 622026 and 622027, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed March 7, 2022, insofar as they overruled the initial determinations charging the claimant with an overpayment of \$126 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020; and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 622028 and 622029, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed March 7, 2022, insofar as they overruled the initial determinations charging the claimant with an overpayment of \$126 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020; and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined hearings before the Administrative Law Judge, all parties were accorded an opportunity to be heard and testimony was taken. There was an appearance by the claimant.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that the record was not adequately developed on

the issues of the overpayment of benefits and the associated monetary penalties. We find that a further hearing is necessary to allow for further testimony and other evidence to be received into the record on these issues.

The Commissioner of Labor shall be represented at the remand hearing, and shall produce testimony and other evidence to establish whether the claimant was paid \$126 in benefits for the week ending November 1, 2020, when and how those benefits were paid to the claimant, and why they appear to have been released to the claimant in July 2021.

The claimant is directed to produce copies of his bank statements for the account into which his unemployment benefits were deposited, for the months of November 2020, and July and August 2021.

Documents produced by the parties shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to appear and produce the evidence as directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and holding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive any other evidence necessary to decide the remanded issues.

Now, based on all of the foregoing, it is

ORDERED, that in Appeal Board Nos. 622026 and 622027, the decisions of the Administrative Law Judge, insofar as they overruled the initial determinations charging the claimant with an overpayment of \$126 in Pandemic Emergency Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits be, and the same hereby are, rescinded; and it is further

ORDERED, that in Appeal Board Nos. 622028, and 622029, the decisions of the Administrative Law Judge, insofar as they overruled the initial determinations charging the claimant with an overpayment of \$126 in Pandemic Emergency

Unemployment Compensation (PEUC) benefits repayable pursuant to § 2107 (e) (2)

of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the remanded issues only, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, on the remanded issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER